IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ROBERT W. JONES PLAINTIFF

. Civil Action No. 1:97cv135-D-D

TRUE TEMPER SPORTS, a/k/a
EMHART INDUSTRIES, a/k/a
BLACK & DECKER CORPORATION DEFENDANT

MEMORANDUM OPINION

Presently before the court is the Defendant's Motion for Summary Judgment.[1] Upon consideration of the motion, the submissions of the parties and the record in this action, the court finds the motion well-taken and shall grant it.

. Factual and Procedural Background

This is an employment discrimination case. The Defendant True Temper Sports (hereinafter "True Temper") manufactures steel and graphite tubing products, such as steel and graphite golf club shafts.[2] The Plaintiff Robert W. Jones worked for True Temper from 1992 to 1996 at its facility in Amory, Mississippi, where True Temper manufactures steel golf club shafts. At the termination of his employment in 1996, Mr. Jones held the position of Director of Steel Operations. As Director of Steel Operations, Mr. Jones was the True Temper employee ultimately responsible for the operation of the Amory facility.

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[1]Also before the court are the following matters: (1) the Defendant's "Motion to Strike Portions of the Affidavit of Robert W. Jones;" and (2) the Plaintiff's "Objections to Order Denying Motion to Reconsider and Order on Motion to Compel." The court shall discuss these matters below.

[2]"True Temper is a division of Emhart Industries, Inc., a Connecticut Corporation which is a wholly owned subsidiary of The Black & Decker Corporation." Memorandum in Support of Defendants' Motion for Summary Judgment, p. 2.

In 1993, True Temper's Vice-President of Operations resigned. Mr. Jones expressed interest in applying for that position, a supervisory position with responsibility over the production facilities in both Amory and Olive Branch, Mississippi. True Temper did not fill the position until December 1995, when it offered the job to Mark Lang. Age thirty-nine, Mr. Lang was previously Plant Manager at Black & Decker's circular saw business in Shelbyville, Kentucky. Mr. Lang accepted the job with True Temper effective February 1996. In April 1996, True Temper denied Mr. Jones an annual performance review. On May 15, 1996, True Temper denied Mr. Jones a pay increase. On all of these dates, Mr. Jones, who was born August 22, 1946, was forty-nine years old.

On July 15, 1996, Mr. Jones filed a charge of discrimination with the Equal Employment Opportunity Commission (hereinafter "EEOC"). In the charge, Mr. Jones claimed that the following acts constituted unlawful employment practices: (1) the denial of a promotion in February 1996, (2) the denial of an annual performance review in April 1996, and (3) the denial of a pay raise in May 1996. By July 18, 1996, at least one of Mr. Jones's supervisors at True Temper knew Mr. Jones had filed the charge. On July 19, 1996, True Temper suspended Mr. Jones with pay. On August 14, 1996, True Temper terminated Mr. Jones's employment effective August 16, 1998.

After exhausting his administrative remedies, Mr. Jones filed the present action against True Temper under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 *et seq.* (ADEA), and Mississippi law. Mr. Jones's ADEA claims are for age discrimination and retaliation. Now True Temper moves this court for summary judgment as to all of Mr. Jones's claims.

II. Summary Judgment Standard

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The burden rests upon the party seeking summary judgment to show to the district court that an absence of evidence exists in the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986); see Jackson v. Widnall, 99 F.3d 710, 713 (5th Cir. 1996); Hirras v. Nat'l R.R. Passenger Corp., 95 F.3d 396, 399 (5th Cir. 1996). Once such a showing is presented by the moving party, the burden shifts to the non-moving party to demonstrate, by specific facts, that a genuine issue of material fact exists. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986); Texas Manufactured Housing Ass'n, Inc. v. City of Nederland, 101 F.3d 1095, 1099 (5th Cir. 1996); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). Substantive law will determine what is considered material. Anderson, 477 U.S. at 248; see Nichols v. Loral Vought Sys. Corp., 81 F.3d 38, 40 (5th Cir. 1996). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson, 477 U.S. at 248; see City of Nederland, 101 F.3d at 1099; Gibson v. Rich, 44 F.3d 274, 277 (5th Cir. 1995). Further, "[w]here the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Anderson, 477 U.S. at 248; see City of Nederland, 101 F.3d at 1099. Finally, all facts are considered in favor of the non-moving party, including all reasonable inferences therefrom. See

Anderson, 477 U.S. at 254; Banc One Capital Partners Corp. v. Kneipper, 67 F.3d 1187, 1198 (5th Cir. 1995); Taylor v. Gregg, 36 F.3d 453, 455 (5th Cir. 1994); Matagorda County v. Russell Law, 19 F.3d 215, 217 (5th Cir.1994). However, this is so only when there is "an actual controversy, that is, when both parties have submitted evidence of contradictory facts." Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir.1994); Guillory v. Domtar Industries Inc., 95 F.3d 1320, 1326 (5th Cir. 1996); Richter v. Merchants Fast Motor Lines, Inc., 83 F.3d 96, 97 (5th Cir. 1996). In the absence of proof, the court does not "assume that the nonmoving party could or would prove the necessary facts." Little, 37 F.3d at 1075 (emphasis omitted); see Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990).

III. Discussion

. The Federal Claims under the ADEA

Mr. Jones asserts two claims under the ADEA: age discrimination and retaliation. The court shall discuss each claim in turn.

. Age Discrimination

The ADEA makes it "unlawful for an employer to . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age . . . ." 29 U.S.C. § 623(a)(1). The burdens of production and persuasion in an employment discrimination case such as this ADEA case are well-known:

> Absent direct evidence, the plaintiff can create a rebuttable presumption of discrimination by presenting a *prima facie* case. . . . Once a plaintiff demonstrates a *prima facie* case, the burden of production shifts to the defendant to establish a legitimate, nondiscriminatory reason for its decision. Once defendant meets this burden, the presumption dissolves and the plaintiff must prove by a preponderance of the evidence that the employer's articulated reason is but a pretext for age discrimination.

Armendariz v. Pinkerton Tobacco Co., 58 F.3d 144, 149 (5th Cir. 1995) (citations omitted); see also Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252-53, 101 S. Ct. 1089, 1093, 67 L. ed. 2d 207 (1981); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824, 36 L. Ed. 2d 668 (1973). Under this framework, a plaintiff can avoid summary judgment "if the evidence taken as a whole (1) creates a fact issue as to whether each of the employer's stated reasons was what actually motivated the employer and (2) creates a reasonable inference that age was a determinative factor in the actions of which the plaintiff complains." Rhodes v. Guiberson Oil Tools, 75 F.3d 989, 994 (5th Cir. 1996)).

Mr. Jones asserts three instances of age discrimination: (1) True Temper's failure to promote him to the position of Vice-President of Operations in February 1996, (2) True Temper's failure to conduct a performance review in April 1996, and (3) True Temper's failure to grant him a raise in May 1996.[3]

(a) Failure to Promote

Regarding the failure to promote, Mr. Jones may establish a *prima facie* case of age discrimination by demonstrating that (1) he was not promoted; (2) he was qualified for the position he sought; (3) he was within the protected class at the time of the failure to promote; and (4) either (i) the position he sought was filled by someone outside the protected class; (ii) the position he sought was filled by someone younger; or (iii) he was otherwise demoted or not promoted because of his age. Bennett v. Total Minatome Corp., 138 F.3d 1053, 1060 (5th Cir. 1998). Solely for the purpose of analyzing the failure to promote claim, the court shall assume

[3] Mr. Jones does not assert a claim for age discrimination as to the suspension or the termination.

that Mr. Jones makes a *prima facie* case of age discrimination.

So assuming, the court's next inquiry is whether True Temper has produced a legitimate, nondiscriminatory reason for that failure. A defendant's burden at this point is only to "'clearly set forth, through the introduction of admissible evidence,' reasons for its actions which, if believed by the trier of fact, would support a finding that unlawful discrimination was not the cause of the employment action." St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 507, 113 S. Ct. 2742, 2747, 125 L. Ed. 2d 407 (1993) (citing Burdine, 450 U.S., at 254-55 & n.8, 101 S. Ct., at 1094-95 & n.8). The legitimate, nondiscriminatory reasons which True Temper proffers here are the following: (1) in late 1995, when True Temper was choosing whom to hire as Vice-President of Operations, Mr. Jones was performing poorly as the Director of Steel Operations in True Temper's Amory facility; and (2) Mr. Lang, whom True Temper hired instead of promoting Mr. Jones, had exhibited excellent performance in his prior position with Black & Decker's circular saw business in Shelbyville, Kentucky.[4] In support of both reasons, True Temper offers the declarations of several True Temper employees. One declarant is Scott Hennessy who became President of True Temper in January 1996. Mr. Hennessy states,

> [T]he December 1995 True Temper Sports Income Statement for the Amory facility . . . reveals that the Amory facility's operating income for 1995 was $19,096,000 and that the operating income form 1994 was $22,108,000. Operating income for 1995 was $3,012,000 **less** than 1994 operating income. Net sales for the Amory facility in 1995 were $55,279,000 while sales for the Amory facility in 1994 were $54,226,000. Net sales in 1995 exceeded sales in 1994 by $1,053,000.

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[4]At first glance, it appears that these two reasons could be merged into a single one, *i.e.*, that Mr. Lang was more qualified than Mr. Jones. However, True Temper does not merely contend that Mr. Jones was less qualified. It also contends that Mr. Jones's performance by December 1995 was so poor "that he was never a serious contender for the Vice-President of Operations position." Defendant's Memorandum in Support of Motion for Summary Judgment, p. 14.

Declaration of Scott Hennessy ¶ 5. As to the second reason, Mr. Hennessy lists a number of accomplishments of Mr. Lang during his prior employment which persuaded True Temper to hire Mr. Lang instead of promoting Mr. Jones. Id. ¶ 9. Considering this evidence, the court finds that True Temper proffers two legitimate, nondiscriminatory reasons sufficient to rebut the presumption of discrimination raised by Mr. Jones's *prima facie* case.

Now that True Temper has rebutted the presumption, the court must grant True Temper's motion for summary judgment unless "the evidence taken as a whole (1) creates a fact issue as to whether each of the employer's stated reasons was what actually motivated the employer and (2) creates a reasonable inference that age was a determinative factor in the actions of which the plaintiff complains." Rhodes v. Guiberson Oil Tools, 75 F.3d 989, 994 (5th Cir. 1996)). Seeking to show such evidence, Mr. Jones provides the court with a stack of 156 exhibits which stands 10 inches tall and contains approximately 2300 pages of reading material. However, the few specific facts[5] in those exhibits to which Mr. Jones directs the court's attention fail to show the

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[5]Mr. Jones fails to designate in those exhibits many specific facts upon which he relies in opposition to the motion for summary judgment.

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth *specific* facts showing that there is a genuine issue for trial.

Fed. R. Civ. P. 56(e) (emphasis added); see BBS Norwalk One, Inc. v. Raccolta, Inc., 117 F.3d 674, 678 (2nd Cir. 1997) ("Rule 56(e) will then require BBS to show, by specific references to the arbitration record . . . ."); McClendon v. Indiana Sugars, Inc., 108 F.3d 789, 795 (7th Cir. 1996) ("[The plaintiff] must come forward with 'specific facts showing that there is a genuine issue for trial' by referring to the record evidence on file."). In other words, the non-movant must "designate" specific facts upon which he relies:

> Rule 56(e) therefore requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial."

court that summary judgment is inappropriate here.

Mr. Jones offers these specific facts:

(1) From 1993 to 1995, True Temper gave Mr. Jones three pay raises, three stock option awards, two bonuses and one outstanding performance appraisal. Plaintiff's Response to Motion for Summary Judgment, Exhibit "A," pp. 4-31. Except for the December 1995 stock option award – which recognized the year 1995 as a whole and therefore does not clearly reflect True Temper's opinion of Mr. Jones's performance specifically at the end of the year – Mr. Jones received all of his honors prior to May 1995, *i.e.*, during the first three of his four years with True Temper. Id.

(2) True Temper supervisors gave Mr. Jones two laudatory memoranda dated April 2, 1996. One of the memoranda is from True Temper's Vice President of Marketing David Hallford to Mr. Jones. In it Mr. Hallford stated,

> Bob, I wanted to thank you and your staff for the extra effort that was taken to get the "perfect" Dynamic Gold shafts that Dave Rennie requested for Greg Norman. Curtis, Gary, and I am not sure who else was involved, [sic.] did the company a great service by their prompt and effective response. As you know we were able to take all of the "Rifle" shafts out of Norman's clubs in Jacksonville and this likely would not have happened without the help from Amory.
>
> Please pass on my thanks to all those involved. We are

Celotex, 477 U.S. at 324, 106 S. Ct. at 2553.

Allegations of fact without sufficient direction to this court of the origin of those allegations do not satisfy Rule 56. This court has no duty to scour the record on behalf of the Plaintiff and locate the facets of the case favorable to him. Jones v. Sheehan, Young & Culp, P.C., 82 F.3d 1334, 1338 (5th Cir. 1996) ("Rule 56, therefore, saddles the non-movant with the duty to 'designate' the specific facts in the record that create genuine issues precluding summary judgment, and does not impose upon the district court a duty to survey the entire record in search of evidence to support a non-movant's opposition.") (citing Forsyth v. Barr, 19 F.3d 1527, 1537 (5th Cir. 1992)).

> having a great year on tour and Amory has played a vital role in that success.

Plaintiff's Response to Motion for Summary Judgment, Exhibit "A," p. 48. The other memorandum is from Mr. Hennessy to Mr. Jones, Mr. Lang, Vince DeFazio (a True Temper supervisor at the Olive Branch, Mississippi), and an individual named Isaac Read. In that memorandum, Mr. Hennessy congratulated all four "Gentlemen" for what "looks like [True Temper's] best quarter in over three years." Plaintiff's Response to Motion for Summary Judgment, Exhibit "(r)."

(3) "Nothing in [Mr. Jones's personnel] file reflects 'lack of performance' or 'poor job performance.'" Plaintiff's Memorandum in Support of Response to Motion for Summary Judgment, p. 6 (citing Plaintiff's Response to Motion for Summary Judgment, Exhibit "B," pp. 1-45).

(4) In the summer of 1995, True Temper initiated a new "Strategic Plan." Plaintiff's Response to Motion for Summary Judgment, Exhibit "(f)." In conjunction with the new strategic plan, the Amory facility introduced a number of break-through products. Id., Exhibit "(g)." Therefore, Mr. Jones argues, the problems the Amory facility plant experienced in late 1995 were not caused by any failure to perform on Mr. Jones's part, but by the inherent difficulty of assimilating break-through products into a manufacturing process. Plaintiff's Memorandum in Support of Response to Motion for Summary Judgment, p. 5; Plaintiff's Supplemental Memorandum in Support of Plaintiff's Response, pp. 1-2.

(5) In the news release announcing Mr. Lang's appointment to the position which Mr. Jones sought, True Temper stated Mr. Lang's age: "Mark T. Lang, 39, joins True Temper

Sports from its parent Black & Decker, where he has been serving as the Operations Director for the Shelbyville, Kentucky facility which specializes in metal forming and plating." Plaintiff's Response to Motion for Summary Judgment, Exhibit "(m)" (also stating age in promotion announcement of Howard A. Lindsay: "Mr. Lindsay, 38, joins True Temper . . . .").

(6) During Mr. Jones's tenure with True Temper, True Temper hired or promoted several persons in their thirties: Mr. Hennessy, Mr. Lindsey, Mr. Lang and a person named Vince DeFazio.

The court finds that Mr. Jones's evidence, taken as a whole, does not create a reasonable inference that age was a determinative factor in True Temper's decision not to promote Mr. Jones. The main evidence to which Mr. Jones draws the court's attention regarding age is the news release announcing Mr. Lang's age. However, the mere announcement of an employee's age is not probative of an employer's discriminatory intent because it is not direct and unambiguous, allowing a reasonable jury to conclude without any inferences or presumptions that age was an impermissible factor in the employer's decision. See EEOC v. Texas Instruments, Inc., 100 F.3d 1173, 1180 (5th Cir. 1996) (regarding spoken comments). Mr. Jones also points out to the court a handful of individuals whom True Temper hired or promoted in their thirties to replace workers in the protected class. Plaintiff's Memorandum in Support of Response to Motion for Summary Judgment, pp. 3, 4. "[S]tatistical evidence may be probative of pretext in limited circumstances . . . ." Texas Instruments, 100 F.3d at 1185. The evidence here, however, is not probative; it is informal, incomplete and inconclusive.

In sum, no reasonable fact-finder could conclude based on the specific facts to which Mr.

Jones directs the court's attention that True Temper failed to promote Mr. Jones because of his age. Certainly the evidence does show that Mr. Jones did good work for True Temper, primarily during the first three of his four years with True Temper. The evidence also shows that True Temper recognized Mr. Jones's good work and rewarded him for it. However, the evidence does not show that True Temper refused to promote Mr. Jones because he was forty-nine years old. Understandably, Mr. Jones disagreed with True Temper's business decision not to promote him. However, "[t]he ADEA was not intended to be a vehicle for judicial second guessing of business decisions, nor was it intended to transform the courts into personnel managers." Thornbrough v. Columbus & Greenville R. Co., 760 F.2d 633, 647 (5th Cir. 1985).

Incidentally, True Temper asserts that "Plaintiff *must* demonstrate he was 'clearly better qualified' than Mr. Lang in order to meet his burden of proof on the failure to promote claim." Motion for Summary Judgment ¶ 5 (emphasis added). True Temper's assertion is incorrect. "[A] plaintiff *can* take his case to a jury with evidence that he was clearly better qualified than younger employees who were retained." Walther v. Lone Star Gas Co., 952 F.2d 119, 123 (5th Cir. 1992) (emphasis added). However, a plaintiff is not required to do so in order to overcome a motion for summary judgment.

(b) Denial of Performance and Salary Reviews

Mr. Jones argues that "Defendants have failed to proffer a legitimate, non-discriminatory reason for the challenged employment action, *i.e.*, not conducting the salary and performance review of Robert W. Jones . . . ." Plaintiff's Memorandum in Support of Response to Motion for Summary Judgment, p. 9. Whether Mr. Jones is correct in so arguing is irrelevant for he fails even to raise a *prima facie* case of age discrimination as to the performance and salary reviews.

Like a plaintiff the Fifth Circuit recently discussed, Mr. Jones "could have established a *prima facie* case of disparate treatment by showing that younger managers received raises and bonuses under circumstances 'nearly identical' to his." Bennett, 138 F.3d at 1062 (quoting Mayberry v. Vought Aircraft Co., 55 F.3d 1086, 1090 (5th Cir. 1995)). However, also like the plaintiff in Bennett, Mr. Jones "did not produce any evidence that the other managers who received raises and bonuses were similarly situated to him. Nor did he present any other evidence that would raise an inference of age discrimination." Id. at 1062. For this reason, the court shall grant True Temper's motion for summary judgment as to Mr. Jones's age discrimination claims against True Temper for its failure to conduct performance and salary reviews in 1996.

2. Retaliation

The ADEA provides, "It shall be unlawful for an employer to discriminate against any of his employees . . . because such individual . . . has made a charge . . . under this Act." 29 U.S.C. § 623(d).

> A plaintiff establishes a *prima facie* case of unlawful retaliation by proving (1) that [he] engaged in protected activity, (2) that an adverse employment action occurred, and (3) that a causal link existed between the protected activity and the adverse employment action.The burden of establishing the "causal link" in the prima facie case is much less onerous than the burden of proving "but-for" causation required for the determination of the ultimate issue of retaliation. . . .
>
> In order to establish the causal link between the protected conduct and the illegal employment action as required by the prima facie case, the evidence must show that the employer's decision to terminate was based in part on knowledge of the employee's protected activity.

Sherrod v. American Airlines, Inc., 132 F.3d 1112, 1122 & n.8 (5th Cir. 1998) (citations omitted).

Here, Mr. Jones cannot establish a *prima facie* case of retaliation. Complaint ¶¶ 12, 15. To be sure, Mr. Jones did engage in a protected activity: he filed a charge of age discrimination

with the EEOC on July 15, 1996. Also, an adverse employment action did occur: True Temper suspended Mr. Jones's employment on July 19, 1996, and terminated his employment on August 14, 1996, effective August 16, 1996. However, the evidence does not show a causal link between the protected activity and the suspension or the termination. Of course, at first glance there appears to be a causal link. On July 18, 1998, True Temper discovered Mr. Jones had filed the charge. Just the next day, True Temper suspended Mr. Jones with pay. However, upon a closer inspection of the facts, it is clear that True Temper decided over a month before July 18, 1998, to terminate Mr. Jones's employment. See Defendant's Memorandum in Support of Motion for Summary Judgment, pp. 17-18; Declaration of Saul M. Scherzer ("[Officers at True Temper] contacted me on July 1, 1996, and asked me to provide outplacement assistance to Robert Jones . . . ."). Indeed, it is clear that the only reason True Temper did not terminate Mr. Jones's employment on July 19, 1998, was that officers of True Temper "wanted to have time to consider what impact, if any, the filing of the Charge of Discrimination would have on the situation." Declaration of Scott Hennessy, ¶ 19. Considering this evidence, no reasonable fact-finder could conclude that True Temper's decisions to suspend and then to terminate Mr. Jones's employment were based in part on knowledge that Mr. Jones had filed an EEOC charge. Mr. Jones directs the court's attention to no specific facts which would allow a reasonable fact-finder to conclude otherwise. Accordingly, the court shall grant the motion for summary judgment as to the retaliation claims.

. The State Law Claims

Having dismissed the claims over which it has original jurisdiction, the court declines to exercise supplemental jurisdiction over Mr. Jones's state law claims. See 28 U.S.C. § 1367.

Therefore, the court shall dismiss Mr. Jones's state law claims without prejudice.

C. Additional Matters

Two additional matters are also before the court. One is the Defendant's "Motion to Strike Portions of the Affidavit of Robert W. Jones." The Plaintiff submitted the affidavit of Robert W. Jones in support of his response to the motion for summary judgment. In ruling on the motion for summary judgment, the court does not rely upon the portions of the affidavit to which the Defendant objects. Therefore, the court finds the motion to strike portions of the affidavit moot and shall deny it as such.

The other matter is the Plaintiff's "Objections to Order Denying Motion to Reconsider and Order on Motion to Compel." Essentially the ruling to which the Plaintiff objects is the Magistrate Judge's denial of the Plaintiff's motion to compel the Defendant to produce documents which the parties refer to as "succession planning reports." Plaintiff's Objections ¶¶ 1, 2. According to the Plaintiff, the Defendant composed these reports "for purposes of determining who would succeed into positions or titles higher in the corporate organization." Id. ¶ 4. The Plaintiff contends that "[a]t least one such document included the name of the Plaintiff, Robert W. Jones." Id. On May 1, 1998, the Magistrate Judge denied the motion to compel because "[s]uccession planning reports were not requested." On June 26, 1998, the Magistrate Judge denied the Plaintiff's motion to reconsider the May 1st denial. After considering the matter, this court concludes that the Magistrate Judge's ruling is neither clearly erroneous nor contrary to law. See Fed. R. Civ. P. 72(a). Therefore, this court shall overrule the Plaintiff's objections.

IV. Conclusion

The court shall dismiss Mr. Jones's ADEA claims because he fails to present a genuine issue as to a material fact regarding each of those claims. The court shall dismiss Mr. Jones's state law claims without prejudice because the court declines to exercise supplemental jurisdiction over them. The court denies True Temper's motion to strike as moot. Lastly, the court overrules Mr. Jones's objections to the ruling of the Magistrate Judge.

A separate order in accordance with this opinion shall issue this day.

This the ____ day of July 1998.

_____
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ROBERT W. JONES PLAINTIFF

. Civil Action No. 1:97cv135-D-D

TRUE TEMPER SPORTS, A/K/A
EMHART INDUSTRIES, A/K/A
BLACK & DECKER CORPORATION DEFENDANTS

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT,
DISMISSING FEDERAL CLAIMS WITH PREJUDICE,
DISMISSING STATE LAW CLAIMS WITHOUT PREJUDICE,
DENYING AS MOOT MOTION TO STRIKE PORTIONS OF AFFIDAVIT,
and OVERRULING OBJECTIONS

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED that:

(1) the Defendant's Motion for Summary Judgment is GRANTED;

(2) the Plaintiff's federal claims are DISMISSED;

(3) the Plaintiff's state law claims are DISMISSED WITHOUT PREJUDICE;

(4) the Defendant's Motion to Strike Portions of the Affidavit of Robert W. Jones is DENIED AS MOOT;

(5) the Plaintiff's objections to the ruling of the Magistrate Judge are OVERRULED; and

(6) this case is CLOSED.

All memoranda, depositions, declarations and other materials considered by the court in ruling on these motions are hereby incorporated into and made a part of the record in this action.

SO ORDERED, this the ____ day of July 1998.

_____
United States District Judge